IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE EIGHTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 3670 of 2001

Between:

1. V.Govindaraju, (died) S/o. V.Rangaiah,

R/o. Mettaguda, Secunderabad.

2. Smt. V.Anasuya,

W/o.V.Govindarajulu, Hindu aged about 40 years,

R/o.H.No.83/1, Moula-ali Jopadi,

Near Moula-Ali Darga, Backside of Jayaprakash Hotel,

Hubli, Karnataka State

(2nd petitioner is impleaded as L.R. of the 1st petitioner

as per Court Order, dated18.7.2005 in W.P.M.P.No.9381 of 2005)

..... PETITIONERS

AND

1 The Chief Security Commissioner, Railway Protection Force,
South Central Railway, Rail Nilayam, Secunderabad.
2 The Divisional Security Commissioner, Railway Protection Force,
South Central Railway, Hyderabad Division, Secunderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ order or direction more particularly one in the nature of writ of mandamus declaring the action of the 1st respondent in so far as denying the back wages and reverting the petitioner from Head Constable TPO-cum-Driver to substantive rank of Constable/Fire in the time scale of pay of Rs.825 - 1200 (RSRP) with cumulative

effect for a period of 5 years and treating the service from date of removal to the date of reinstatement as dies non vide proceedings No Force Order No.103/97 (X/P.227/Appeal/93/27), dt. 24.6.1997 while modifying the order passed in proceedings No.DAR/153/11/HYB/93 (D.O.No.26/93), dt. 26.4.1993 of the 2nd respondent as illegal, arbitrary and violative of Article 14 and 16 of the Constitution of India and consequently direct the respondents to pay all the back-wages including seniority, pay fixation and other attendant benefits forthwith.

Counsel for the Petitioner: MR.J.M.NAIDU

Counsel for the Respondents: MR.A.KRISHNAM RAJU

The Court made the following :

ORAL ORDER:

This writ petition is filed seeking a Mandamus declaring the action of the 1st respondent insofar as denying the back wages and reverting the petitioner from Head Constable, T.P.O.-cum-Driver to substantive rank of Constable/Fire in the time scale of pay of Rs.825/-Rs.1200/- (RSRP) with cumulative effect for a period of 5 years and treating the service from the date of removal to the date of reinstatement as dies-non vide proceedings No. Force Order No.103/97 (X/P.227/Appeal/93/27), dated 24.6.1997 while modifying the order passed in proceedings No.DAR/153/11/HYB/93 (D.D.No.226/93), dated 26.4.1993 of the 2nd respondent as illegal and arbitrary.

The facts relevant for appreciating the controversy may be briefly delineated as follows:

The petitioner was appointed as Railway Protection Force Constable Driver Grade-III on 2.7.1974 and promoted to Grade-II Head Constable T.P.O.-cum-Driver, in 1984. On 17.11.1992, while he was working as Head Constable, a charge sheet was issued against him alleging that he left the duty point and was also found in unlawful possession of tools belonging to the workers of S&T/W.S./MFT. On the charges framed, a Criminal Case in C.C.No.364 of 1992 was lodged against him. The Enquiry Officer conducted an enquiry

without giving proper opportunity to him and submitted a report on 21.12.1992 holding that the charges framed against the petitioner are proved. The petitioner submitted his explanation, but the 2nd respondent without considering his case, passed removal order, dated 26.4.1993. The petitioner was acquitted in the criminal case on the ground that the charges were not proved. On the Mercy Petition filed by the petitioner, the 1st respondent, taking his acquittal into consideration, reinstated him into service with penalty of reversion to the substantive rank of Constable/Fire in the time scale of Rs.825-1200/- (RSRP) with cumulative effect for a period of 5 years and posted at Guntakal vide Force Order, dated 24.6.1997, but denied the back wages. Hence, this writ petition has been filed.

The respondents filed counter affidavit *inter alia* denying the affidavit averments and stated that the petitioner was convicted in C.C.No.364 of 1992, but on an appeal preferred by him in C.A.No.203 of 1995, he was acquitted on "benefit of doubt". As per the Railway Board's instructions, the departmental case may be reviewed only if the employee is exonerated/acquitted in the criminal case on merit (without benefit of doubt or on technical grounds). The 1st respondent took a lenient view after considering the merits of the judgment of the I Metropolitan Sessions Judge, Hyderabad in C.A.No.203 of 1995, dated 22.8.1996 and set aside the removal order and awarded penalty of reversion to the substantive rank of Constable/Fire.

Heard the learned counsel for the petitioner and the learned standing counsel for Railways and perused the material placed on record.

The learned counsel for the petitioner has contended that after the order of acquittal passed by the Criminal Court, the reviewing authority ought to have ordered consequential benefits from the date of dismissal, and the period i.e. from 20.10.1992 to the date of his removal from service which was treated as suspension for a limited purpose, may be treated as continuity of service.

On the other hand, the learned standing counsel for the respondents

has contended that the legal representatives of the deceased-employee did not challenge the impugned proceedings issued by the disciplinary authority and therefore, they have become final and hence, there are absolutely no grounds to interfere with the impugned proceedings.

The limited prayer of the writ petitioner is that the period of suspension from 20.10.1992 to the date of removal from service i.e. 27.4.1993 may be treated as continuity of service, but the Chief Security Commissioner treated that period as suspension only. The learned counsel for the petitioner is right in asking for treating that period as continuity of service. After the imposition of the punishment by the disciplinary authority and as confirmed by the appellate authority, the petitioner was acquitted in C.A.No.203 of 1995 on the file of I Metropolitan Sessions Judge, Hyderabad, dated 22.8.1996. After the appeal was allowed, the writ petitioner filed Review Petition before the reviewing authority, who after having taken a lenient view, set aside the penalty of removal from service and ordered reinstatement of service with a penalty of reversion to the substantive rank of Constable. While allowing the review petition, the reviewing authority ordered that the period of suspension from 20.10.1992 to 27.4.1993 i.e. the date of removal from service was treated as suspension only. But, this Court is of the opinion that the said period has to be regularized in view of the fact that he is deemed to be in service though he was under suspension. Therefore, the said period of suspension can be treated as continuity of service. In all other respects, the order of the reviewing authority is confirmed.

With the above observation, the writ petition is partly allowed. In the circumstances of the case, there shall be no order as to costs.

(K.C. BHANU, J.)

18th July, 2005

bcj

To

1 The Chief Security Commissioner, Railway Protection Force,
South Central Railway, Rail Nilam, Secunderabad.
2 The Divisional Security Commissioner, Railway Protection Force,
South Central Railway, Hyderabad Division, Secunderabad.

3. Two C.D. copies.